

## **REMARKS**

### **Status of Claims**

Claims 1-20 are pending and have been rejected by the Examiner. Claims 1, 8, 9 and 17 have been amended. Claims 21-23 have been added. Accordingly, claims 1-23 are presented and at issue. The Applicant respectfully requests reconsideration and withdrawal of the rejections in view of the foregoing amendments, and following remarks. No new matter has been entered.

### **Support for Claim Amendments**

Claim 1 has been amended to recite *inter alia* “A computer implemented method of providing a disciplined approach for conducting business management activities operating on one or more computer processors, the computer processors in communication with a host system computer over a communication network, the method comprising.” Support for the amendment can be found throughout the specification. (See e.g., FIG. 1, and Para. [0053]). No new matter has been entered.

In addition, claim 1 has been amended to recite *inter alia* “based upon observable behaviors conducted as observed in an initial screening.” Support for the amendment can be found throughout the specification. (See e.g., Para. [0041]). Claims 9, and 17 have been similarly amended and are therefore similarly supported. No new matter was added.

Claim 8 has been amended to state *inter alia* “generating a daily load review, the daily load review comprising the calculation of the work volume that needs to be completed with an amount of labor needed to produce the work volume; and creating a daily schedule control using the tally sheet and the daily load review.” Support for the amendment can be found throughout the specification. (See e.g., Para. [0031]). No new matter has been entered.

Claim 21 is newly added. Support for the claim can be found throughout the specification and figures. (See e.g., Para. [0038]). No new matter was entered. ,

Claim 22 is newly added. Support for the claim can be found throughout the specification and figures. (See e.g., Para. [0039]). No new matter was entered.

Claim 23 is newly added. Support for the claim can be found throughout the specification and figures. (See e.g., Para. [0037]). No new matter was entered.

**Rejections Under 35 U.S.C. §101**

Claims 1-8 were rejected under 35 U.S.C. §101, as being allegedly directed at non-statutory subject matter. The Applicant has amended claim 1 to recite *inter alia* “A computer implemented method of providing a disciplined approach for conducting business management activities operating on one or more computer processors, the computer processors in communication with a host system computer over a communication network, the method comprising.” The Applicant submits that claims 1-8 are in compliance with 35 U.S.C. 101. Reconsideration and withdrawal of the rejections is respectfully requested.

**Rejections Under 35 U.S.C. §103**

Claims 1, 9 and 17 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711.

Claims 2 and 10 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1 and 9 above, and further in view of Leehman, U.S. Patent Publication No. 2005/0043976.

Claims 3-4, 11-12 and 18 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1, 9 and 17 above, and further in view of Kaplan et al., Linking the Balanced Scorecard to Strategy (1996).

Claims 6 and 14 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1, 9 and 17 above, and further in view of Goodkovsky, U.S. Patent No. 6,807,535.

Claims 5 and 13 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 in view of Kaplan et al., Linking the Balanced

Scorecard to Strategy (1996) as applied to claims 4 and 12 above, and further in view of Leehman U.S. Patent Publication No. 2005/0043976.

Claims 7 and 15 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1, and 9 above, and further in view of Denton, Keith D., Work sampling: Increase Service and White Collar Productivity (1987).

Claims 8 and 16 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Michaels, Edward, Work Measurement (1989) in view of Nation et al. U.S. Patent Publication No. 2007/0203711 as applied to claims 1, and 9 above, and further in view of Wilde, Edwin, A performance control system (1993).

The Examiner has not provided citations to references in support of any rejections for claims 19 and 20. As claims 19 and 20 recite features substantially similar to those recited in claims 5, 13 and 6, 14, respectively, the Applicant will address the rejections of claims 5, 13 and 6, 14 to include claims 19 and 20.

With regard to amended independent claim 1, the Examiner relies upon Nation for allegedly teaching “generating a roadmap includes ranking individuals amongst one another based upon observable behaviors conducted as [observed in] an initial screening to identify training requirements and...training the individuals includes linking a corresponding training program with the individuals in response to the initial screening.” In issuing this rejection, the Examiner notes on page 3 of the Office Action that the term “roadmap” is not defined in the Applicant’s specification and, therefore, the Examiner is free to give the allegedly “undefined” phrase its broadest, reasonable interpretation, which includes the following: “a plan, a program, a document, a map, a path, a guideline, or the like” (Office Action, page 3). The Applicant respectfully disagrees with the Examiner on two points.

First, MPEP 2011.01(IV) states “[A]n applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used

to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" and, if done, must "'set out his uncommon definition in some manner within the patent disclosure' so as to give one of ordinary skill in the art notice of the change" in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)).”

The term “roadmap” is sufficiently defined, e.g., in paragraph [0041] and Figure 2. A follow up phase 208 (Figure 2) includes generating the roadmap (paragraph [0041]), and which defines subprocesses 208a-208d within the phase 208. These subprocesses of the roadmap generation are described in the specification to provide further support for the roadmap. Paragraph [0041] states “[I]n the follow-up phase 208, a roadmap is developed for resolving any issues and for improving existing processes. Action plans 208b for removing barriers include detailed action items and metrics for guiding individuals through the roadmap. Action plans include specific due dates for listed steps to be completed, and specifies the individuals responsible for the accomplishment of those steps. Feedback is also used in implementing a detailed action plan. A sample action plan is shown in FIG. 13. Walkabouts 208a, side-by-side reviews 208d, and an employee ranking report 208c are used to reinforce coaching opportunities. An employee ranking report is used to rank employees based upon their initial screening (e.g., observations) in order to identify any specific training requirements needed. The information provided in the ranking report details specific deficiencies that can be used to link a specific training program with the employee.” Thus, paragraph [0041], taken in view of Figure 2, clearly outlines the definition of roadmap with respect to the process 208 and subprocesses 208a-208b, such that one of ordinary skill in the art is given notice of the change in meaning.

Second, even if the Examiner’s assertion that the term “roadmap” is not clearly defined in the specification, which the Applicant is not conceding, the meaning of the term is clearly presented within the context of the claim itself in view of the specification. By contrast, in the Office Action, the Examiner lists terms that are deemed to be equivalent to “roadmap” without providing any citation. The Applicant is unclear as to which, if any, sources are relied upon and submits that the Examiner has erred in the above-referenced determination.

“While dictionaries and treatises are useful resources in determining the ordinary and customary meaning or meanings of disputed claim terms, the correct meaning of a word or phrase is informed only by considering the surrounding text. This is why consulting dictionary definitions is simply a first step in the claim construction analysis and is another reason why resort must always be made to the surrounding text of the claims in question, the other claims, the written description, and the prosecution history. Our precedent referencing the use of dictionaries should not be read to suggest that abstract dictionary definitions are alone determinative. In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor. ‘Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings.’” *Brookhill-Wilk, LLC v. Intuitive Surgical, Inc.*, 326 F.3d 1215, citing *Renishaw PLC*, 158 F.3d at 1250, 48 USPQ2d at 1122; see also *Tex. Digital*, 308 F.3d at 1203, 64 USPQ2d at 1819. As the wording of the claim, the use of the term “roadmap” in context with the claim language, in view of the support in the specification, the Applicant submits that intrinsic support for the meaning of “roadmap” is clearly provided; therefore, the Examiner’s use of extrinsic evidence for the term meaning to support the rejection of claim 1 is in error.

The Applicant further traverses the rejection of claim 1 as being allegedly unpatentable over Michaels in view of Nation. Nation discloses “using competency related information for individuals to provide a variety of benefits” (Abstract). However, Nation fails to teach or suggest generating a roadmap including ranking individuals based upon observable behaviors conducted as observed in an initial screening to identify training requirements, and training the individuals includes linking a corresponding training program with the individuals in response to the initial screening, as recited in Applicant’s claim 1.

Specifically, Nation is targeted to individuals and their career objectives rather than “ranking individuals [amongst one another] based upon observable behaviors” (“the

system then assists Employee ZZ in developing an action plan to manage his future career so as to be qualified for the target work position type within a specified period of time,” para. [0095]). In addition, Nation teaches comparing employees to each other; however, it does not do so as part of a roadmap but rather, the employees are ranked as part of a search to fill positions (“10A-10B illustrate an example of searching for employees using competency-related information and of comparing employees based on such information...[i]n particular, as illustrated in FIG. 10A, any of the competency-related information for individuals that was previously discussed can be used as the basis of a search,” para. [0103]). Paragraph [0130] of Nation also describes creating an action plan for an individual as opposed to “generating a roadmap” based on a number of different factors from a groups of individuals. (“to determine whether the user wishes to create an action plan for the employee related to the career path,” paragraph [0130]). In paragraph [0144], Nation teaches ranking employees based on their preferences as opposed to “observable behaviors” (“then in step 1720 any identified employees are ranked on the basis of that preference information,” para. [0144]).

The Examiner’s response to the Applicant’s arguments insists that Nation does indeed teach “ranking individuals amongst one another based upon observable behaviors.” The Examiner points to paragraph [0024] of Nation and states that the statement “to rank members having a specified current skill level of a competency based on the length of time that they have had that skill level and/or on the basis for their achieving of that skill level,” stating that “skills and competency levels are observable behaviors.” (Office Action, page 4). Nation, however, teaches ranking based on “current skill level of a competency *based on the length of time that they have had that skill level and/or on the basis for their achieving of that skill level.*” (Nation, Para. [0024], emphasis added). Therefore, Nation teaches using an inquiry (i.e., how long they had the skill level, or what is the basis of their achievement) as opposed to actual observation of the skills as recited in claim 1. The Examiner goes on to state that “ranking competency gaps,” as described in paragraphs [0085] and [0087], also teaches, “ranking individuals amongst one another based upon observable behaviors.” Nation goes on to recite “Section 550 provides a variety of information about current competency *gaps for Employee ZZ... gaps presented in a ranked order based on those criticality values.*”

(Nation, Para. [0085], emphasis added). Reference 550 of FIG. 5B in Nation is the graphical representation discussed in paragraph [0085] and clearly shows that the competency gaps are ranked by a single individual as opposed to ranking against the other individuals. (See FIG. 5B, reference 550 entitled “My Competency Gaps,” reference 540 entitled “My Other Competencies” and reference 560 entitled “My Planned Competencies”). Therefore, paragraphs [0085] and [0087] discuss ranking the competencies of an individual, amongst themselves, in order of criticality of the individual’s competencies with regard to the individual’s goals and is not the same as “ranking individuals amongst one another based upon observable behaviors,” as recited in claim 1. (Nation, Para. [0085]). The Examiner also points to paragraphs [0144]-[0145] in Nation stating that ranking by preference information is the same as “ranking individuals amongst one another based upon observable behaviors.” As discussed above, however, Nation bases its ranking on an inquiry of prior work history as opposed to actual observation of the skills in practice as is taught in the Applicant’s claim 1.

The Examiner goes on to state that “ranking individuals amongst one another based upon observable behaviors” is old and very well known in the art. The Examiner submits U.S. Patent No. 6,119,097 to Ibarra, (hereinafter “Ibarra”), U.S. Patent No. 7,092,821 to Mizrahi et. al., (hereinafter “Mizrahi”), and U.S. Patent No. 7,483,842 to Fung et. al., (hereinafter “Fung”), in support. Ibarra recites in pertinent part “rank employees so as to be able to compare them to each other...ignore what can be real progress in a person's job performance which might not appear ...in very broad performance criteria.” (Ibarra, col. 1 lines 23-26). Therefore, Ibarra discusses the prior art’s use of broad performance criteria in ranking as opposed to “based upon observable behaviors conducted as observed in an initial screening.” It should also be noted that, by definition, a performance review is based on prior history on not “based upon observable behaviors conducted as observed in an initial screening.” In addition, Mizrahi is devoid of teaching ranking of individuals but instead discusses ranking content. Additionally, the Applicant submits that Mizrahi teaches a non-analogous art of “Large group interactions via communication networks,” and one of ordinary skill in the art would not have been motivated to combine Mizrahi. Feng teaches performance ranking, however Feng’s performance ranking is based on a comparison of performance against an

expected performance range as opposed to “ranking individuals amongst one another based upon observable behaviors conducted as observed in an initial screening.” (“A performance ranking is determined by mapping the performance score to the performance range, as shown at step,” Feng, col. 8 lines 41-44; emphasis added). Therefore, as these examples show, “ranking individuals amongst one another based upon observable behaviors conducted as observed in an initial screening to identify,” is not old and well known in the art. The Applicant respectfully traverses the Examiner’s use of Official Notice.

Thus, as Nation fails to teach or suggest these features, the Applicant submits that the combination of Michaels and Nation would not result in the Applicant’s claim 1. For at least these reasons, the Applicant submits that claim 1 is patentable over Michaels in view of Nation.

In addition, with regard to claim 8, neither Nation, Michaels, nor Wilde, either alone or in combination teach, suggest, or render obvious, “generating a daily load review, the daily load review comprising the calculation of the work volume that to be completed and an amount of labor to produce the work volume; and

creating a daily schedule control using the tally sheet and the daily load review, the daily schedule control,” as recited in claim 8. Therefore, for at least that reason, claim 8 is allowable.

Independent claim 9 is substantially similar to claim 1. For at least the reasons advanced above with respect to claim 1, the Applicant submits that Nation fails to teach all of the features of claim 9. For at least this reason, independent claim 9 is patentable over Michaels in view of Nation and is in condition for allowance.

Independent claim 17 is substantially similar to claim 1. For at least the reasons advanced above with respect to claim 1, the Applicant submits that Nation fails to teach all of the features of claim 17. For at least this reason, independent claim 17 is patentable over Michaels in view of Nation and is in condition for allowance.

Claims 2-8, 10-16, and 18-20 depend from what should be allowable independent claims 1, 9, and 17. For at least reasons due to this dependency, the Applicant submits



that claims 2-8, 10-16, and 18-20 are also in condition for allowance. Reconsideration and withdrawal of the outstanding rejections is respectfully requested.

Claim 21 recites “wherein the observable behaviors are percentage of telephone calls answered within an average speed, the average speed determined by the key measurement indicators.” Neither Michaels nor Nation nor any of the art cited by the Examiner teaches, suggests, or renders obvious each and every element of claim 21. Therefore, for at least this reason, claim 21 is allowable.

Claim 22 recites “wherein the observable behaviors are a number of repeat calls on the same issue, the method further comprising:

comparing the number of calls on the same issue with the key measurement indicators in order to determine the percentage of change in the number of repeat calls over time.” Neither Michaels nor Nation nor any of the art cited by the Examiner teaches, suggests, or renders obvious each and every element of claim 22. Therefore, for at least this reason, claim 22 is allowable.

Claim 23 recites “wherein the observable behaviors are a measurement of the speed in which a customer call is answered, the method further comprising:

comparing the measurement of the speed in which a customer call is answered with the key measurement indicators in order to determine the percentage of change in the speed in which a customer call is answered over time.” Neither Michaels nor Nation nor any of the art cited by the Examiner teaches, suggests, or renders obvious each and every element of claim 23. Therefore, for at least this reason, claim 23 is allowable.

**Conclusion**

In view of the foregoing amendments and remarks, it is submitted that the application is in condition for allowance. Such action is therefore respectfully requested.

If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any such issues may be promptly resolved.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130. In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

CANTOR COLBURN LLP  
Applicant's Attorneys

By:           /Marisa J. Dubuc/            
Marisa J. Dubuc  
Registration No. 46,673  
Customer No. 36192

Date:           June 24, 2009

Address:       20 Church Street, 22nd Floor  
                  Hartford, CT 06103-3207

Telephone:     (860) 286-2929

Fax:            (860) 286-0115